

MEMORANDUM OF LAW

DATE: September 9, 1986

TO: Councilmember Uvaldo Martinez

FROM: City Attorney

SUBJECT: Analysis of Charter Section 144

BACKGROUND

During the discussion of item 150 on the Council agenda of July 28, 1986 [subject matter "Divestiture of Retirement Funds from Investments in Companies Doing Business in South Africa"] a statement was made by Mr. Ron Saathoff regarding the extent of Council authority under Charter section 144. Mr. Saathoff was addressing the Council as a member of the Retirement Board. As I recall, Mr. Saathoff stated that the Council could, by resolution, establish investment guidelines but that aspect of Council authority did not supersede or impact the other investment authority set forth in that section. As the discussion developed, it appeared you took exception to Mr. Saathoff's understanding in that you indicated, by some inference, that the Council resolution authority over investments applied to and overrode any other provision of Charter section 144.

The operative language in question [of section 144] reads as follows:

SECTION 144. BOARD OF ADMINISTRATION

....

The Board of Administration shall be the sole authority and judge under such general ordinances as may be adopted by the Council as to the conditions under which persons may be admitted to benefits of any sort under the retirement system; and shall have exclusive control of the administration and investment of such fund or funds as may be established;

and shall be permitted to invest in any bonds or securities which are authorized by General Law for savings banks; and, further, shall be permitted to invest in such additional classes or types of investments as are approved by resolution of the Council of The City of San Diego; provided, however, that individual investments within the classes or types

approved by the Council must be approved by independent investment counsel; and, provided, further, the board may place such funds in the hands of the Funds Commission for investment.

. . . .

¶Emphasis added.σ
Charter section 144

As a result of your difference of opinion with Mr. Saathoff at the time, you requested our opinion in the matter, said request being made in open session and referred to us by City Clerk Route Slip dated July 31, 1986. The entire item 150 was continued to September 15, 1986 and our response was requested for contemporary consideration.

CONCLUSION

The matter of authority of investing retirement funds is set forth in Charter section 144 and provides several alternatives for investment. The Charter is the law of the City. Insofar as the establishment of a retirement system and the provisions thereunder, the Charter provisions prevail. Mr. Saathoff stated ¶cited from Clerk's Route Slipσ that the City "may have jurisdiction over one investment element, and not the other." Mr. Saathoff is correct.

DISCUSSION

As indicated above, Charter section 144 establishes a Board of Administration and endows said Board with specific powers. These powers are not a legislative grant by the Council. They have been voted upon and approved by the electorate and may only be modified or withdrawn by the voters. The Council cannot, for whatever reason it deems necessary or desirable, withdraw or otherwise change the authority specifically and expressly vested by the voters in the Retirement Board. Of course, the Council, if it should desire, may place such matter on the ballot as a Charter amendment; however, that is the extent of the action available.

We now turn our attention to the wording of section 144 and the meaning thereof. Sections of the Charter of The City of San Diego are construed in the same manner as statutes.

Statutes must be construed like every other piece of English composition. This does not mean merely that the words in a statute are to be read according to their ordinary meaning and grammatical sense; it means that a statute must be construed according to the ordinary rules of construction applied to any English

composition.

4 Sutherland Statutory Construction 25

The operative words of Charter section 144 are contained in an exceptionally long compound sentence. A compound sentence consists of two or more independent clauses, joined by a coordinating conjunction; and an independent clause is a group of words containing a subject and a predicate and capable of standing alone as a sentence. ¶Kies, A Writer's Manual and Workbook, (Enlarged ed., 1936).σ If the independent clauses of a compound sentence are long and complicated, especially when there are commas within them, a semicolon before the coordinating conjunction is preferable. ¶Id. at 20.σ

Viewed in its pure grammatical form, the controlling language of section 144 consists of a series of independent clauses, each of which is capable of standing on its own and none of which serve as antecedent to the other. In that form and structure alone, Mr. Saathoff's observation about investment authority would be correct.

However, we are further persuaded by the language of the section. The "plain meaning rule" of statutory construction stands for the proposition that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed. 2A Sutherland Statutory Construction 73. Section 144 states, essentially:

1. The Board of Administration shall have exclusive control of the administration and investment of such fund or funds as may be established; and
2. The Board of Administration shall be permitted to invest in any bonds or securities which are authorized by General Law for savings banks; and
3. The Board of Administration shall further be permitted to invest in such additional classes or types of investments as are approved by resolution of the Council of The City of San Diego;

This kind of projection of the language of section 144 emphasizes and strengthens the rule of grammar that those independent clauses are simple sentences, capable of standing on their own. It further points out that the Board has exclusive control of the investment of funds in the retirement system portfolio. The only constraint placed thereon is set forth in the two (2) following clauses regarding permissive areas in which to invest; not areas of mandate and each of which are independent of the other. Of course, section 144 also requires that any individual investments within classes or types approved by

Council (see no. 3 above) must be approved by independent investment counsel.

In conclusion, the investment authority contained in section 144 of the Charter is very clear. We have set forth our legal opinion as to the statutory construction of that section. It is our opinion that the presentation by Mr. Saathoff in regard to investment authority is correct.

JOHN W. WITT, City Attorney

By

Jack Katz, Chief Deputy

JK:js:mm:142.2(x043.2)

ML-86-106